IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 60 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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UNION OF INDIA THRO'NARCOTICS COMMISSIONER

Versus

OMPRAKASH JAIN DIRECTOR,

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Appearance:

1. Criminal Revision Application No. 60 of 2002

MR ANANT S DAVE for Petitioner No. 1-2

MR AD SHAH for Respondent No. 1-6

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 7

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/09/2002

ORAL JUDGEMENT

The revisioner - Union of India, through Narcotic Commissioner, Gwalior, challenges the order of learned Special Judge (NDPS Act), Surat, passed below Exhibit 6 in Criminal Case No. 9/2001 on 9.1.2002, directing accused persons to submit a photo-stat copy of certain

documents etc. and thereafter directing the authority to permit him to take away the original documents upon certain conditions.

2. The brief facts in a narrow compass can be stated thus:

2.1 The respondents Nos. 1 to 6 herein are engaged in the business of manufacture of chemical dyes. For that purpose, they purchase Acetic Anhydride as raw-material. It is the case of the prosecution revisioner that Acetic Anhydride is also a raw-material for manufacture of some Narcotic drugs and it is alleged that respondents Nos. 1 to 6 under the garb of business of manufacture of chemicals are illegally diverting Acetic Anhydride for preparation of some Narcotic Drugs. Acetic Anhydride is a Controled substance as defined under the Narcotic Drugs and Psychotropic Substances Act. As such, a raid was conducted and certain materials, documents etc. were seized. Pending the trial, Application Ex. 6 came to be filed by the accused persons - respondents Nos. 1 to 6 herein, for return of these articles, which includes cheques, demand drafts, books of accounts, computer hard-disks etc. After hearing both the sides, learned Special Judge passed the impugned order, which runs as under:-

" ORDER

This application is allowed and the complainant is directed to return all documents which are mentioned in original copy of panchnama produced at mark 3/1 and the accused are directed to submit photo-stat copy of all these documents, registers etc., and on production of photo-stat copy duly certified, the original mentioned in mark 3/1 panchnama be returned to the accused with the direction to produce the original as and when required by the Court or by the Competent Authority in same condition.

It is further ordered that the finished goods and other raw-materials which are attached and detained as per the panchnama which is produced at mark 3/2 also ordered to be returned to the accused and the accused should furnish a solvency surety of Rs. 2 lacs (Rupees two lacs only) with a personal bond of like amount.

It is further ordered that the accused should have to give undertaking that they will not use

Acetic Anhydride or raw-materials attached for any illegal purpose including preparation of any Narcotic drugs and Psychotropic Substances as alleged and the accused should produce the same as and when asked for by the Court without any dispute.

On production of the photo-stat copies of the documents which must be duly certified, and necessary solvency surety, the muddamal which is mentioned in mark 3/1 and 3/2 be returned to the accused.

No order as to costs so far as this application is concerned.

Pronounced in the Open Court today on this 9th day of January, 2002.

Date: 9.1.2002.
Sd/- on 9.1.2002
(D.C. Mankad)
Judge, Special Court (NDPS Act),
Surat."

3. Aggrieved by the said order, this Revision is preferred and learned Standing Counsel for the Central Government Mr. Dave has submitted that these are original documents which are primary evidence, which are directed to be returned to the accused persons; trial is yet to begin and if the documents are damaged, it may prejudice the case of the prosecution. Mr. Dave was more agitated by the observation made by the Special Judge to the effect that there is no iota of evidence on certain points. He submitted that the observations as a whole would prejudice the case of the prosecution. He therefore urged that this Revision Application may be allowed.

4. Learned Advocate Mr. A.D. Shah appearing for respondents Nos. 1 to 6 has opposed to this Revision Application. According to him, documents ordered to be returned are basic necessity for running business. The raw-material, namely Acetic Anhydride ordered to be returned is ordered to be returned on certain conditions which the respondents shall abide by. He submitted that as observed by the learned Special Judge, presently there is no evidence to support the allegations. It is only on the basis of certain documents attached to the complaint that the prosecution proposes to prove the diversion of Acetic Anhydride and that this aspect is taken care of by

the learned Special Judge by directing return of xerox copies. Mr. Shah therefore submitted that the Revision Application may be rejected.

5. Learned Additional Public Prosecutor Mr. P.R. Abichandani appears for respondent No.7 State of Gujarat.

6. Having regard to the rival side contentions raised before this Court, it is true that learned Special Judge (NDPS Act), Surat has made certain observations in respect of case of the prosecution. But those observations are made only on the basis of the material on record as it stands prima-facie and obviously for the purpose of deciding the application in question. By no stretch of imagination can it be said that those observations are on merits of the case of the prosecution at, or after the trial. Interesting it is to note that on factual part those observations are not challenged by the revisioner. Only one observation can be quoted "..... But there is no iota of evidence produced by the complainant to support this allegation at this stage and the original complaint is also based on mere suspicion." The second observation that can be quoted is " .... It is not the case of the complainant that this raw material is illegally kept by the accused as alleged. It is also admitted that for using and for keeping this chemical, no licence is required nor any permission. The learned DGP Shri Gandhi has also admitted this fact, but his submission was that all the documents which are attached by the complainant can prove the diversion of this chemical for preparation of some narcotic drugs." Learned Standing Counsel Mr. Dave has also reiterated this aspect.

7. It would be appropriate to note that what is seized is the Bank Passbook, Computers, Hard-disks, Registers, Cheque Books etc. and learned Special Judge has directed return of those documents which are seized by panchnama mark 3/1, the finished goods seized by panchnama mark 3/2 and the Acetic Anhydride upon undertaking, with a direction that photostat copies of the documents would be duly certified and that necessary solvency surety for the muddamal would be furnished.

7.1 There appears to be no reason for interference of the order considering the facts of the case. All documents ordered to be returned would be available at the trial as per the direction given by the Court below. The order for return of the documents etc. therefore does not call for any interference, but the directions and the conditions need modification. It is therefore

directed that while returning the documents seized under panchnama mark 3/1, the revisioner shall get the documents xeroxed at the cost of respondents Nos. 1 to 6 and before getting them xeroxed, each document shall be counter-signed by the Authority and thereafter the documents will be returned on same terms and conditions as directed by the learned Special Judge. There shall be no change in the other conditions and directions. Rule made absolute accordingly.

(A.L.Dave, J.)

*/Mohandas